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No. 01-823 October Term 2001

In the Supreme Court of the United States

TIMOTHY TRIOLA, PETITIONER

v.

DANNY VIERA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT DANNY VIERA

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QUESTIONS PRESENTED

1. Whether the prisoner petitioner was excused from first exhausting his administrative remedies as required by the Prison Litigation Reform Act before suing for money damages under §1983 on the grounds that the administrative procedures at the jail where he was incarcerated were vague and informal?

2. Whether the petitioner's report of his assault to the Pennsylvania State Police satisfied his duty under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. §9997e(a), to first exhaust his administrative remedies at the jail before filing suit under 42 U.S.C. §1983?

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Statement of the Case

Petitioner, Timothy Triola, was an inmate at the Monroe County Correctional Facility ("Jail") in Stroudsburg, Pennsylvania. He sues the Respondent, Danny Viera, a correctional officer at the Jail pursuant to 42 U.S.C. §1983 for violating his Eighth Amendment rights, claiming that Officer Viera maliciously attacked him.

Specifically, the petitioner alleges that respondent grabbed petitioner by the neck and hair, slammed him into a door and repeatedly slammed his head against the floor. Respondent claimed that petitioner was resisting his attempts to move Petitioner to a different housing unit and that it became necessary to subdue the petitioner by grabbing his hair and forcing him to the ground.

Petitioner claims that respondent's actions constituted cruel and unusual punishment in violation of the Eighth Amendment, a violation of substantive due process, and an assault under state law. The petitioner seeks compensatory and punitive damages for the violation of his civil rights.

Petitioner admitted to the District Court that he pursued none of the administrative remedies available to him at the jail before suing for money damages under 42 U.S.C. §1983.

The Jail has a grievance system for resolving prisoner complaints. J.A. 5-18. Under that procedure, an inmate may file a grievance if he "feel[s] that someone or some action . . . has been taken against [him that] is unjust or unfair. . . ."

The Respondent presented the Jail's Inmate Handbook to the District Court which outlined the grievance system that the Petitioner chose to ignore. The process is a "formal" one and it may include a review by five separate individuals

throughout the appeal process, as follows:

1. The problem is first discussed with the Housing Unit Officer;

2. If the inmate is dissatisfied with the result of his discussion with the Housing Unit Officer, the inmate must complete an"inmate request slip," checking the box marked "grievance" and providing a short written explanation of his problem. This grievance is forwarded to the Housing Unit Counselor.

3. The Housing Unit Counselor either addresses the grievance himself or forwards the grievance to the Unit Commander.

4. The Unit Commander provides a written response or forwards the grievance to the appropriate person at the next level of review.

5. The Deputy Warden reviews and responds in writing to the grievance.

6. The Warden is the final step in the review appeal process. His decision is in writing and must include a review of the inmate's complaint and the previous responses by jail administrators."

See page 14 of Inmate Handbook, attached to plaintiff's brief and defendant's Statement of Undisputed Facts, at exhibit "G."

Petitioner admitted to the District Court that he did not file a grievance concerning the matters set forth in his complaint. Pet. App. A29. Instead of filing a grievance, the

petitioner called his mother who complained to the Pennsylvania State Police that her son was assaulted. Pennsylvania State Police Trooper Robert Sebastianelli investigated the claim and concluded that the charges against respondent were unfounded. Trooper Sebastianelli concluded that petitioner had not been assaulted and that any force that respondent used was necessary to control the combative petitioner. In his incident report, Trooper Sebastianelli noted that the petitioner's injuries consisted only of minor bruises and abrasions.

The respondent moved for summary judgment based on the petitioner's failure to exhaust the available administrative remedies at the Jail as required by the PLRA. Pet. App. A4. That provision directs that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a) (Supp. V 1999).

The district court granted petitioner's motion and dismissed petitioner's complaint without prejudice. Pet. App. A22-A30.

Petitioner had argued to the District Court that he should be excused from pursuing any administrative remedies because the Jail's grievance procedures were "vague" and "informal." The District Court rejected the petitioner's factual argument and concluded that the Jail's grievance procedure was sufficiently specific. The District Court stated:

> "While the MCCF policy encourages an informal resolution of problems within each housing unit, thereafter the policy sets forth a procedure for filing of inmate grievances. Defendant's Exhibit

F, at 14."

District Court opinion, at pp 9a-10a.

The petitioner also argued without success that his mother's report of the incident to the Pennsylvania State Police was an acceptable substitute for the Jail's grievance procedure. The District Court rejected this argument concluding that this was not a proper substitute for the established grievance system at the jail:

> "Reporting an incident to the State Police does not constitute compliance with the administrative procedures listed in the Inmate Handbook. Accordingly, plaintiff's failure to pursue and exhaust the administrative remedies available to him at the MCCF, bars his claim from being heard by this court. Triola Deposition at 74."

The court of appeals affirmed the district court's judgment without opinion.

REASONS FOR DENYING THE PETITION

I. THE PETITIONER WAS NOT EXCUSED FROM EXHAUSTING HIS ADMINISTRATIVE REMEDIES BECAUSE THE PRISON LITIGATION REFORM ACT REQUIRES ONLY EXHAUSTION OF THE REMEDIES WHICH ARE AVAILABLE AND DOES NOT MANDATE A PARTICULAR FORM OF REMEDY.

The respondent contends that the petitioner was not excused from filing a grievance or exhausting his administrative remedies before filing suit under Section 1983. We offer five reasons why the Supreme Court should decline to grant certiorari.

A. To Properly Address the Petitioner's Arguments, the Supreme Court Would Have to Analyze Factual Allegations Decided Adversely to Petitioner.

From a factual standpoint, the record before the District Court does not support the conclusion that the jail's grievance procedure is "vague" or "informal" as contended by the petitioner. Thus, even if the Court were inclined to address this issue, this case is not a suitable vehicle to interpret the PLRA.

The District Court has already examined the grievance procedures in effect at the jail and has concluded that the procedures are not vague or informal. The record reflects that there are multiple levels of review in which written submissions must be filed and which generate written responses from the reviewing warden and deputy wardens. The basis of petitioner's argument is that the first stage of the grievance procedure encourages an informal disposition of a

claim before pursuing the full administrative process. He avoids focusing on the four levels of administrative review that are in effect once the informal process has been tried and is unsuccessful. The grievance procedure permits him to present evidence to the warden and deputy wardens charged with review. Contrary to the Petitioner's claim, it is a detailed procedure. There is an established hierarchy of review and there are special forms created by the jail for the inmate to complete. To properly address the issue of the vagueness of the administrative review process would require the court to analyze factual contentions that were decided adversely to the petitioner. If the court would like to address this issue there are better cases to do so. For these reasons alone, this case is not a suitable vehicle for this Court to interpret the PLRA.

B. The Opinion of the Third Circuit Court of Appeals Was Unpublished.

The Court of Appeals for the Third Circuit affirmed the District Court decision without opinion in a decision that is not published. Accordingly, the decision in this case has no precedential value. Therefore, there are no compelling reasons to hear the facts of this case.

C. There Is an Absence of Circuit Conflict on this Issue.

To the best of respondent's knowledge, the Circuit courts have not yet specifically addressed the issue of whether minimum standards must govern a prison's grievance procedure before exhaustion is mandated by the PLRA. There is thus no circuit conflict. Respondent urges the Court to allow a body of case law to develop among the Circuits before addressing this specific issue.

D. The Plain Language of the PLRA Does Not Mandate a Particular Form of Administrative Remedy.

The PLRA does not particularize the specific administrative system that must be in effect in order to require exhaustion. It clearly states that an inmate must pursue the remedies "as are available":

> "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies **as are available** are exhausted."

42 U.S.C. 1997e(a)(emphasis added).

The language of the statue is unambiguous and is not subject to differing interpretations. The petitioner argues that the Jail's grievance procedure does not specify what remedy may be available. Although the Respondent agrees that the available remedies are not specified in writing, respondent disagrees with the proposition that the grievance procedure does not provide remedies. The remedies are left to the discretion of the reviewing wardens and counselors and the existence of an available remedy is the intention of the jail's grievance procedure. The fact that the remedy that might be available is not the specific remedy that is sought by the inmate in the suit under Section 1983 is not controlling, as confirmed by the Court in Booth v. Churner, 121 S. Ct. 1819, 1823 (2001):

> ". . .[W]e think that Congress has mandated exhaustion clearly enough, regardless of the relief offered through administrative procedures. Cf.

McCarthy, supra, at 144 ("Where Congress specifically mandates, exhaustion is required"). We accordingly affirm the judgment of the Third Circuit."

Booth v. Churner, supra.

E. There Are Policy Reasons for Mandating Compliance Even with an "Informal" Procedure.

The Petitioner's argument that a grievance procedure that is informal may be ignored is belied by the policy considerations which prompted the adoption of the PLRA. Requiring an inmate to exhaust even an informal grievance procedure advances the purposes of the PLRA's exhaustion requirement. Those purposes are to (1) give prison authorities the opportunity to resolve problems within the prison without judicial intervention, (2) help reduce the volume of prison litigation in federal courts, and (3) develop the underlying facts in a way that facilitates litigation in the event a case ends up in court. Booth v. Churner, 121 S. Ct. 1819, 1823 (2001); see McCarthy v. Madigan, 503 U.S. 140, 144-146 (1992).[1]

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[1]See also 141 Cong. Rec. 34,624 (1995)(Rep. LoBiondo)(exhaustion requirement will "provide the opportunity for early resolution of the problem," "reduce the intrusion of the courts into the administration of the prisons," and "provide some degree of fact-finding so that when or if the matter reaches Federal court there will be a record upon which to proceed in a more efficient manner"); id. at 14,573 (Sen. Kyl)("An exhaustion requirement is appropriate for prisoners given the burden that their cases place on the Federal court

Even an informal system advances all of the policy considerations which prompted the adoption of the PLRA.

First, a prison institution may remedy a legitimate claim of excessive force by disciplining the officer involved, retraining the officer, transferring the inmate to a different area of the prison, or issuing a decision that the inmate's complaint is meritorious and the guard's conduct should not be repeated. See Smith v. Zachary, *No. 99-4084*, 2001 WL 723010, at *3 (7th Cir. June 28, 2001). The formality of the grievance procedure does not undermine any of these important goals.

Second, even an informal procedure which requires persons with authority at the jail to respond in writing to an inmate's grievance, may well satisfy the complaining inmate and eliminate his desire to pursue federal court litigation. Booth, 121 S. Ct. at 1823. Alternatively, factual development of the issue and a written decision may persuade the inmate that there is no merit to his claim and dissuade him from filing suit. *Ibid* . In either event, the administrative process reduces the volume of litigation in federal court. It accomplishes this without regard to how specific the grievance procedure is.

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system, the availability of administrative remedies, and the lack of merit of many of the claims."); id. at 14,570 (Sen.Dole)(noting "an alarming explosion in the number of lawsuits filed by State and Federal prisoners"–"from 6,600 in 1975 to more than 39,000 in 1994"); id. at 26,553 (Sen. Hatch)(noting that the "vast majority" of the 39,000 non-habeas suits filed by inmates in federal court"are completely without merit," and that "[t]he crushing burden" of the suits "makes it difficult for courts to consider meritorious claims.).

Third, when litigation cannot be avoided, exhaustion of an excessive force grievance can better prepare the parties for litigation on the issue and expedite resolution of the matter in court. Booth, 121 S. Ct. at 1823. Even an informal procedure which encourages the production of evidence may "at a minimum," develop the "basics of who-did-what-to-whom." Smith, 2001 WL 723010, at *2.

Fourth, institutions have an interest in learning about a deviation from institution policy quickly; internal proceedings can remedy the problem or clarify the facts in a way that dissuades the inmate from filing suit; and factual development can assist the parties in presenting the issues that must be resolved by a court. Even an informal procedure encourages a quick response by prison officials who are put on notice to conduct their own investigation of the assault. Then, if the case reaches court, the District Court has the benefit of institutional expertise. Courts are "ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints." Procunier v. Martinez, 416 U.S. 396, 405 n.9 (1974). The proper response to prison grievances falls squarely within the expertise of prison officials, and, in general, courts owe deference to the solutions chosen by those officials. Bell v. Wolfish, 441 U.S. 520, 547 n.29 (1979).

II. THE PETITIONER'S REPORT OF THE USE OF EXCESSIVE FORCE TO THE PENNSYLVANIA STATE POLICE DOES NOT COMPLY WITH THE EXHAUSTION REQUIREMENTS OF THE PLRA.

The petitioner argues to the court that his report to the Pennsylvania State Police satisfied his obligation to exhaust

his administrative remedies under the PLRA. This argument is directly contradictory to the mandatory language of the PLRA which states:

> "No action shall be brought ... until such administrative remedies as are available are exhausted."

42 U.S.C. 1997e(a).

Had Congress wished to provide an alternative to exhausting administrative remedies, it could have included such language within the PLRA. Congress chose not to and the language of the PLRA unambiguously requires the petitioner to exhaust any and all administrative remedies that are made available to him. As in all cases of statutory construction, the Court's task is to interpret the words of [the statute] in light of the purposes Congress sought to serve." Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 608, 60 L. Ed. 2d 508, 99 S. Ct. 1905 (1979). Petitioner does not argue to the court that the language of the statute is ambiguous. Instead, he argues that a report to the State Police would advance the "intention" of the PLRA by having an investigation performed in advance of filing suit. However, Congress did not state in the statute that a third party investigation satisfies the exhaustion requirement they intended in the act. Petitioner makes an argument that is belied by the clear language of the statute.

For these reasons, and, most importantly, because of the absence of a circuit conflict, we believe that review by the Court at this time is not warranted.

CONCLUSION

Respondent respectfully requests the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted.

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